



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

December 11, 2018

Hon. Kenneth M. Karas
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
300 Quarropas Street, Chambers 533
White Plains, New York 10601-4150

MEMO ENDORSED

Re: Fishman v. Office of Court Administration New York Courts, et al.,
18 CV 00282 (KMK)

Dear Judge Karas:

This Office represents the defendant Office of Court Administration New York Courts [sic] ("OCA") in the above-referenced action. This letter seeks clarification on the operative second amended complaint and asks for additional time to plead or otherwise respond until after the individual defendants have been served with such complaint and the issue of representation of the individual defendants has been resolved between our office and the Office of the New York State Attorney General.

On July 9, 2018, plaintiff filed an amended complaint (Docket No. 26). By Memo Endorsement dated August 15, 2018, this Court granted defendant OCA's request to file a motion to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket No. 28). The Court set the following schedule: defendant's Motion to Dismiss due by September 14, 2018; plaintiff's Response being due by October 15, 2018; and defendant's Reply due by October 29, 2018.

On or about September 7, 2018, plaintiff filed a (2nd) amended complaint without defendant OCA's consent or leave of Court (Docket No. 32). By Order dated October 9, 2018, this Court construed plaintiff's September 7th filing as a Motion for leave to file a Second Amended Complaint (Docket No. 41). The Court directed plaintiff to file a second amended complaint by November 8, 2018 or face dismissal without prejudice. On or about November 8, 2018, plaintiff filed a (2nd) amended complaint, (Docket No. 43), naming as defendants: Office of Court Administration, New York State Courts; Judge Michelle I. Schauer, in her official capacity; Nancy J. Barry, District Executive for the

Ninth Judicial District, New York Courts, in her official capacity; Dan Weisz (sic), Professional Director, New York Courts, in his official capacity; Michelle D'Ambrosio, a court attorney with Westchester Family Court, in her official capacity; Magistrate Carol Jordan, in her official capacity; Judge Gordon Oliver, in his official capacity; Judge Kathy Davidson, in her official capacity; Judge Hal Greenwald, in his official capacity; and, Judge Alan Scheinkman, in his official capacity (the "Individual Defendants").

By letter to the court dated November 9, 2018, plaintiff sought to amend the complaint for a third time, enclosing a new proposed amended complaint with an additional cause of action (Docket No. 44). The November 9, 2018 filing named as defendants the same individuals as the November 8, 2018 filing.

By Order dated November 26, 2018, this Court dismissed the (2nd) amended complaint against all defendant judges on the ground that they are entitled to judicial immunity for actions performed within the scope of judicial responsibilities (Docket No. 46). The Order further directed the Clerk of Court to issue a summons and completed USM-285 forms and deliver them to U. S. Marshal's Service to effect service on the remaining non-judicial individual defendants (Docket No. 46). The court did not address plaintiff's November 9, 2018 request seeking an additional opportunity to amend the complaint.

Defendant OCA respectfully requests clarification as to whether the November 8, 2018 filing, (Docket No. 43), or the proposed amended complaint attached to the November 9, 2018 letter, (Docket No. 44), will be considered the operative second amended complaint. Defendant OCA respectfully requests that its time to answer or otherwise respond to the operative version of the second amended complaint be extended until after the individual defendants have been served with such complaint and the issue of the representation of the individual defendants has been resolved between our office and the Office of the New York State Attorney General, pursuant to Public Officers Law §17. //

*Dkt. No. 44 contains the operative
Second Amended Complaint. Answers will
be due within the time prescribed by
the rules after the last defendant
is served.*

Respectfully submitted,

[Signature]
Lisa M. Evans

Assistant Deputy Counsel

So ordered.
cc: Marc Fishman, Plaintiff pro se
(via E-mail)

[Signature] 12/12/18
The Clerk of the Court is directed to
mail a copy of this Order to the Plaintiff